

APPENDIX B

Petitioners' Proposed Preemption Rule

In order to facilitate the rapid deployment of Digital Television ("DTV") services, ~~as authorized by the Commission in MM Docket No. 87-268~~, and in recognition of the need to facilitate the siting and construction of broadcast transmission facilities generally, the following procedures and rules shall apply to the siting of new broadcast transmission facilities ~~or the alteration or relocation of existing broadcast transmission facilities by~~ television and radio stations whose operations have been authorized by the Commission.

- (a) **Siting Procedures** A State or local government or instrumentality thereof shall act on ~~any request for authorization to place, construct, or modify broadcast transmission facilities within a reasonable period of time after a written request is filed with such government or instrumentality for any required permit or other authorization. For purposes of this subsection, a "reasonable period of time" shall mean:~~

(1) within twenty-one (21) days, with respect to requests to (i) modify existing broadcast transmission facilities where no change in location or overall height is proposed, and (ii) strengthen or replace an existing broadcast transmission facility;

(2) within thirty (30) days, with respect to requests to (i) relocate existing broadcast transmission facilities from a currently approved location to another location within 300 feet; (ii) consolidate two or more broadcast transmission facilities on a common tower or other structure, ~~whether the tower or other structure is pre-existing or new;~~ or (iii) increase the height of an existing tower;

(3) in all other cases, within forty-five (45) days.

The failure of a state or local government or instrumentality thereof to act on any request within a reasonable period of time will result in the request being deemed granted.

(b) **Preemption.**

- (1) No state or local government or instrumentality thereof may deny a request to place, construct or modify a broadcast antenna facility on the basis of:
- (i) ~~the environmental or health effects of radio frequency emissions to the extent that such facility has been determined by the Commission to comply with the Commission's regulations and/or policies concerning such emissions;~~

- (ii) interference effects on existing or potential telecommunications providers, end users, broadcasters or third parties, to the extent that the broadcast antenna facility has been determined by the Commission to comply with applicable Commission regulations and/or policies concerning interference;
 - (iii) lighting, painting, and marking requirements, to the extent that the facility has been determined by the Federal Aviation Administration ("FAA") or the Commission to comply with applicable FAA and Commission regulations and/or policies regarding tower lighting, painting and marking;
- (2) Any state or local land-use, building, or similar law, rule or regulation that impairs the ability of federally authorized radio or television operators to place, construct or modify broadcast transmission facilities, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable in relation to:
- (i) a clearly defined and expressly stated health or safety objective other than one related to those set forth in Section (1)(i)-(iii) above; and
 - (ii) the federal interests in (i) allowing federally authorized broadcast operators to construct broadcast transmission facilities in order to render their service to the public; and (ii) fair and effective competition among competing electronic media.
- (c) **Written decision.** Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify a broadcast antenna facility shall be in writing and supported by substantial evidence contained in a written record. Such written decisions shall be delivered to all applicants within five (5) days.
- (d) **Alternative Dispute Resolution.** In the event that an applicant is denied approval to place, construct, or modify a broadcast antenna facility, the applicant may elect to have its request submitted to an alternate dispute resolution process which shall be administered by the Commission. An Applicant whose request has been denied may elect arbitration by filing a written notice of election, including a copy of the written decision of the state or local government or instrumentality thereof, with the Commission within ten (10) days of receipt of the decision of the state or local government or instrumentality thereof. The Commission shall select an arbitrator to hear and resolve the dispute within five (5) days of receipt of the notice. The Commission shall conduct and complete the arbitration within fifteen (15) days of receipt of the applicants' written request for arbitration. If it is determined that the decision of the state or local government or instrumentality thereof is unsupported by the evidence in the record and would, if allowed to stand, frustrate the federal

interests set forth above in paragraph (b)(2)(ii), the Commission shall issue an order vacating the decision of the state or local government or instrumentality thereof and granting the applicant's request to place, construct, or modify its broadcast antenna facility.

- (e) **Declaratory Relief.** Any radio or television operator adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this rule may, within 30 days after such action or failure to act, petition the Commission for a declaratory ruling requesting relief. The Commission shall act on such petitions within thirty (30) days

- (f) **Definitions.** For purpose of this section:

- (i) "Broadcast transmission facilities" shall mean towers, broadcast antennas, associated buildings, and all equipment cables and hardware used for the purpose of or in connection with federally authorized radio or television broadcast transmissions.
- (ii) "Broadcast operator" shall mean a person, firm, corporation or other form of business organization which has been issued a construction permit, license, experimental authorization, special temporary authorization, or other authority from the Federal Communications Commission.